IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 111/2007

(Bihari Lal Bissa Vs. Jodhpur Vidhyut Vitran Nigam Ltd. & Anr.)

Date of Order : 23/03/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Shreedhar Purohit for the petitioner.

Mr. Ashok Chhangani for the respondents.

BY THE COURT:-

By the instant writ petition under Article 226 of the Constitution of India, the petitioner seeks a direction to the respondents to reimburse his medical claim vide Annex.6 and 7 and make the payment of the expenses incurred by the petitioner for the treatment of his son Pramod Bissa who is wholly dependent on the petitioner.

The facts and circumstances giving rise to the instant writ petition are that the petitioner is an employee of the respondents holding the post of Office Superintendent Gr.II. On 26th October, 2003, his son Pramod Bissa who is wholly

dependent on the petitioner, fell seriously ill on account of sudden attack of Dengue Hemorrhagic fever. He was immediately taken to Dr.Dinesh Kothari, Associate Professor of M.G. Hospital, Jodhpur who in turn advised the patient to be admitted as an indoor patient. However, during the course of treatment of his son, counts of blood platelets fell to only three thousand whereas the normal value of these blood platelets is 1,50,000. The condition of his son went on deteriorating, internal bleeding in the body of the patient started which caused blood spots on his entire body and blood clotting developed in his eyes and finding the condition of patient quite precarious, in an emergent situation, Dr. Dinesh Kothari advised the petitioner to shift his son to Bombay Hospital, Mumbai for treatment. Accordingly the petitioner's son was discharged for taking him to Bombay Hospital, Mumbai. A letter was also addressed by the Hospital authorities at Jodhpur to the Indian Airlines for arranging two seats, one for the son of the petitioner and another for the attendant vide Annex.1 and 2. The petitioner took his son to Mumbai in order to save his life and got him admitted at Bombay Hospital, Mumbai where his son underwent the treatment up to 29.11.2003. Though the life of the petitioner's son could be saved, but his son lost the vision in both the eyes. The petitioner's son was taken to higher center i.e. Sankar Netralya, Chennai, however, the vision of his son could

not be restored and on the date, his son has completely lost the vision in both the eyes. In this regard, the petitioner has placed on record the documents Annex.3 to 5. The petitioner has also placed on record the bills showing the expenses incurred by him for the treatment of his son vide Annex.6 to 8 as also the certificate issued by Indian Airlines as Annex-9. The petitioner filed a medical claim for reimbursement of the expenses incurred by him on the treatment of his son before the Executive Engineer who vide his letter dated 16.9.2005 recommended the matter for allotment of budget and for obtaining sanction for payment to the Superintending Engineer, Jodhpur vide Annex.10. However, the Assistant Accounts Officer working under the respondent No.1 raised certain objections vide Annex.11 and objected to reimburse the medical claim on the ground that the patient has not been referred by the Medical Board for the treatment to higher centre at Mumbai. On raising the objection vide Annex.11, the petitioner approached the respondent No.2, Principal and Controller of Dr. S.N.Medical College and Group of Associated Hospitals, Jodhpur for constituting a Medical Board for giving ex-post facto recommendation. Though the treating doctor, Dr. Dinesh Kothari, Associate Professor of M.G. Hospital, Jodhpur has written that looking to the precarious condition of the patient in an emergent situation it was necessary to take the patient to higher center in order to save his life and therefore,

without completing certain formalities constituting medical board, referred the patient to higher centre. The patient was advised to be taken to higher centre for immediate treatment since the facilities of the nature of treatment to be given to the patient were available at Bombay Hospital, Mumbai and not at Jodhpur in any of the Govt. hospital. A copy of letter constituting medical board has been placed on record as Annex.12. By order Annex.12, the respondent No.2 constituted a medical board consisting of as many as four doctors. The medical board opined that the petitioner's son Pramod Bissa had Dangu Hemorrhagic fever and his platelet count dropped to 6000 mt. With bleeding diathesis. Patient also developed retro bulbar bleeding in both eyes and had panophthalmitis in both eyes, as per record available, patient was advised to go to higher centre for further management by the treating Physician. However, it was stated that the facilities for this treatment are available in this institution and also in the State. Hence this petition.

I have heard learned counsel for the petitioner and the counsel appearing for the respondents.

The respondent No.1 the employer of the petitioner has filed reply to the writ petition taking a stand that Rule 7 of the Rajasthan Civil Services Medical Attendance Rules lays down that the ailing government servant or his family member can be referred for the treatment outside the State in a case where no

treatment is available in the Government Hospital in the State. However, it was admitted that a medical board was constituted and the Medical board has given its opinion vide report dated 22.10.2005 Annex.12. It was also admitted that one of the doctors, who was a part of the Medical Board and was treating the petitioner's son at the relevant time, referred the petitioner in emergency to the Bombay Hospital, but such recommendation given by the doctor does not ipso facto tantamount to an approval by the medical board at all and therefore, the medical claim of the petitioner has been denied. So far as the facts pleaded in the writ petition with regard to ailment of the petitioner's son, nature of disease, nature of treatment given at Jodhpur and the nature of treatment needed in order to save the life of patient sending him to a higher centre have not been disputed.

The pleadings made and the various documents placed on record including the recommendation of Dr. Dinesh Kothari, Associated Professor, clearly go to show that the condition of the petitioner's son at Jodhpur during treatment became very precarious which is evident from the opinion of the Medical Board that the petitioner's son Pramod Bissa had Dangu Hemorrhagic fever and his platelet count dropped to 6000 mt. with bleeding diathesis. Patient also developed retro bulbar bleeding in both eyes and had panophthalmitis in both eyes, and

patient was advised to go to higher centre in order to save his life. In my view, merely because certain treatment formalities available in the State cannot be made the sole ground to deny the reimbursement of the medical claim. In the peculiar circumstances of the case, it would not have been possible for a prudent person to make a roving enquiry within the State for treatment to save the life of the patient. Admittedly, the treating doctor, Dr. Dinesh Kothari, has stated that in an emergent situation, he advised the petitioner to take his son to the higher centre. This clearly goes to show that emergent treatment needed to the son of the petitioner was not otherwise available in the State of Rajasthan and this fact further finds strength from the fact that due to drop of platelet count and developing retro bulbar bleeding in both the eyes, the petitioner's son has lost vision in both the eyes. Had the treatment for the disease been available at Jodhpur or else where in Rajasthan, the situation of losing vision in both the eyes would not have arisen and therefore, in my view, the petitioner was justified that too on the advise of the treating Physician Dr. Dinesh Kothari, to take his son to the higher centre in order to save his life and for that purpose whatever expenses have been incurred by the petitioner for treatment and attendant including charges of conveyance deserve to be reimbursed to the petitioner.

A Division Bench of this Court in K.K.Bansal Vs. State

of Rajasthan and Others, D.B.Civil Special Appeal No. 226/02 decided on 27.3.2003 held that justice must not be sacrificed at the alter of technicalities. In that case, the appellant therein underwent surgery at Escorts Heart Institute and Research Centre, New Delhi. The medical claim was not entertained by the State Govt. on the ground that the appellant therein did not obtain permission of the Govt. before undergoing surgery at Escorts Heart Institute and Research Centre, New Delhi. The Division Bench noticed that the State Govt. failed to give proper consideration to the fact that the appellant felt chest pain on December 5, 1996 while he was on leave at New Delhi and was moved to the hospital. There was hardly any time for the appellant to obtain requisite permission from the State Government. It was further held that to expect a person who is undergoing bypass surgery to seek permission from the State Government from hospital bed is absolutely unreasonable. The concerned authority ought to have considered that a person admitted in the hospital in such a state of health is not expected to ask the State Government to accord permission to him for surgery. The first concern of a patient and his relatives is to save his life. On these premises, this Court held that there was no justification for not entertaining the request of the appellant for grant of ex-post-facto sanction for undergoing bypass surgery at the Escorts Heart Institute and Research Centre, New Delhi, on a

technical plea.

In Anil Kumar Surolia Vs. The State of Rajasthan and Others, D.B.Civil Writ Petition No. 5689/03 decided on 9.5.2005, a Division Bench of this Court directed the respondent State to make payment to the petitioner therein with regard to medical treatment obtained by him at Krishna Heart Institute, Ahmedabad.

In Himmat Singh Vs. State of Rajasthan and Ors. S.B.Civil Writ Petition No. 5703/03 decided on December 22, 2004, a Jaipur Bench of this Court held that in a welfare State, the welfare of the people is frustrated just because of bureaucratic approach of the concerning authorities. A person having put in whole life in the services of the State till he attains the age of superannuation always require human considerations. Technicalities of rules and regulations are not required to be followed just in a mechanical manner so as to frustrate the very purpose of the Scheme. Each case has to be examined on its own facts before taking any final decision. While granting such benefits under beneficial schemes, financial constraints are also always secondary. On these premises, the petitioner therein was held entitled for reimbursement of the expenses incurred on the treatment as per the bills submitted by him.

In State of Rajasthan and Ors. Vs. Shri Thomas T., D.B.Civil Special Appeal (Writ) No. 874/06, a Division Bench of

this Court held that wherever the State Policy of reimbursement of medical expenses requires strait jacket procedural requirement to be fulfilled before obtaining treatment from Government or designated hospital, the same has not been approved by the Supreme Court. It was observed that procedure laid down for the same was very onerous, sometime not workable specially in emergency cases. The procedure which is required is that an application seeking approval for such treatment in desired hospital has to be made to the Director of Health and Family Welfare two months in advance duly recommended by CMO/Medical Superintendent indicating that treatment for such disease is not available in the Government hospital. It also required that in case of an emergency such application is to be authenticated by CMO/MS to be made 15 days in advance. The Court observed that such procedure deprive persons from getting better treatment at other places. Some of the serious disease do not knock or warn through bell giving them time. Emergency cases require immediate treatment and if with a view to comply with the procedure one has to wait then it could be fatal. One may not in such cases live, if such a procedure is strictly followed. Thus, while the Supreme Court approved the principle to the extent State Policy restricts the reimbursement of medical expenses with reference to designated hospital rates, denial of reimbursement of medical expenses

altogether merely on the basis of the place where treatment has been taken because of not following the procedure laid down for securing such treatment was not approved.

In Smt. Harbir Kaur Vs. State of Rajasthan and Ors. RLR 2004 (3) Raj. 594 a Devision Bench of this Court held that immediate surgery was advised to the petitioner's husband Jagpal Singh therein and since the treatment by specialised Hospital was required, the petitioner's husband therein in order to avert threat to life asked the Medical Board to recommend his case for surgery in Escorts. Since Escorts is a referal hospital recognised by the State of Rajasthan for treatment of heart ailment of the Government servants, there is no reason for declining reimbursement of the amount for CABG operation of petitioner's husband Jagpal Singh. It was further held that looking to the situation prevailed in the SMS Hospital, Jaipur, if the petitioner's husband Jagpal Singh therein, a severe diabetic patient got himself operated at Escorts, his decision was justified and accordingly held that the claim of the petitioner for medical reimbursement is valid and justified and directed the respondent State to make payment of the same.

In view of the aforesaid discussion, in my view, the writ petition deserves to succeed.

In the result, the writ petition is allowed. The respondent No.1 is directed to reimburse the medical claim of

the petitioner and all the expenses incurred by the petitioner on the treatment of his son as per Annex.6 and 7. No order as to costs.

(H.R.PANWAR),J.

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